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10 Counsel for Plaintiff

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 VOICEBOX CREATIVE, INC., a California  
Corporation,

16  
17 Plaintiff,

18 vs.  
19

20 KNAPP FARMS, INC. D/B/A KNAPP,  
WINERY AND VINEYARD RESTAURANT,  
21 a New York Corporation,

22 Defendants.  
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Case No.:

COMPLAINT FOR DECLARATORY  
JUDGMENT

JURY DEMAND REQUESTED

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1 For its complaint, Plaintiff VOICEBOX CREATIVE, INC., (hereinafter "Voicebox"), by  
2 and through its attorneys, complains against KNAPP FARMS, INC., (hereinafter "Knapp Farms")  
3 as follows:

#### 4 THE PARTIES

5 1. Plaintiff, Voicebox is a corporation organized and existing under the laws of the  
6 State of California with its principal place of business at 256 Sutter Street, 5<sup>th</sup> Floor, San Francisco,  
7 California, 94108. Plaintiff created the approved "Pasta Red Wine," "Pasta White Wine," and  
8 "Pasta Wine" trademarks for use in its business.

9 2. Upon information and belief, Defendant, Knapp Farms, Inc. d/b/a Knapp Winery and  
10 Vineyard Restaurant (hereinafter "Knapp Farms") is a corporation organized and existing under the  
11 laws of the State of New York with its principal place of business at 2770 County Road 128,  
12 Romulus, New York 14541. Upon information and belief, Knapp Farms has distributed and sold  
13 wines under the "Pasta Red," "Pasta Red Reserve," and "Pasta White" labels in violation of  
14 Voicebox's rights.

#### 15 VENUE AND JURISDICTION

16 3. Jurisdiction is proper in this court because this litigation arises under federal law,  
17 namely 17 U.S.C. § 1051 *et. seq.* (Lanham Act). The Court has jurisdiction over this action under  
18 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1338(a) (trademarks), and 28 U.S.C. § 2201  
19 (Declaratory Judgment Act).

20 4. This Court has personal jurisdiction over Knapp Farms because Knapp Farms, on  
21 information and belief, conducts business in the State of California, including the sale of its  
22 products to California residents residing within this district.

23 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1391(c).

24 6. An actual case or controversy has arisen between the parties. Knapp Farms has  
25 asserted sole rights to Voicebox's approved "Pasta Red Wine" trademark. These statements threaten  
26 injury to Voicebox. Further, Knapp Farms' use of the "Pasta Red," "Pasta Red Reserve" and "Pasta  
27 White" marks comprises an infringement of Voicebox's approved "Pasta Red Wine," "Pasta White  
28

1 Wine,” and “Pasta Wine” marks and is likely to cause confusion, mistake and deception to the  
2 public as to the identity and origin of Voicebox’s goods, causing irreparable harm to Voicebox.

### 3 ALLEGATIONS

4 7. Voicebox is in, among other things, the wine business and created the approved  
5 “Pasta Red Wine,” “Pasta White Wine,” and “Pasta Wine” trademarks for use in its business.

6 8. On April 17, 2006, and pursuant to 15 USC §1051(b), Voicebox filed its Intent to  
7 Use Trademark Application with the United States Patent and Trademark Office (hereinafter  
8 “USPTO”) for registration of the “Pasta Red Wine” (Application No. 78/862,907), “Pasta White  
9 Wine” (Application No. 78/804,364), and “Pasta Wine” (Application No. 78/862,871) marks.

10 9. On December 12, 2006 the USPTO published the “Pasta Red Wine,” “Pasta White  
11 Wine,” and “Pasta Wine” marks for opposition.

12 10. Pursuant to the Trademark Act, once a trademark application is approved for  
13 publication, anyone who believes that their mark will be damaged by the published mark can  
14 initiate a trademark opposition proceeding before the USPTO within thirty (30) days of publication.  
15 *See*, 15 U.S.C. § 1063(a) [Section 13(a) of the Trademark Act].

16 11. Pursuant to the Trademark Act, unless registration is successfully opposed:

17 (1) a mark entitled to registration on the principal register based on an  
18 application filed under section 1(a) [15 USC 1051(a)] or pursuant to  
19 section 44 [15 USC 1126] shall be registered in the Patent and Trademark  
20 Office, a certificate of registration shall be issued, and notice of the  
21 registration shall be published in the Official Gazette of the Patent and  
22 Trademark Office; or

23 (2) a notice of allowance shall be issued to the applicant if the application  
24 applied for registration under section 1(b) [15 USC 1051(b)].

25 *See*, 15 U.S.C. § 1063(b) [Section 13(a) of the Trademark Act].  
26  
27  
28

1           12. In connection with the Voicebox marks at issue, neither Knapp Farms nor any other  
2 entity initiated a trademark opposition proceeding before the USPTO within thirty (30) days of the  
3 December 12, 2006 publication date.

4           13. Indeed, on or about March 6, 2007 the USPTO issued a notice of allowance to  
5 Voicebox for each of the "Pasta Red Wine," "Pasta White Wine," and "Pasta Wine" marks.

6           14. Thereafter, on or about August 30, 2007 Knapp Farms contacted Voicebox, asserting  
7 that Knapp Farms maintained sole rights to the "Pasta Red" mark and requested Voicebox cease and  
8 desist any further use of the "Pasta Red Wine" mark.

9           15. Upon information and belief, Knapp Farms is in the restaurant business and, as part  
10 of that business sells wine into local and, on a very limited basis, to out of state markets, including  
11 California and this district. Upon further information and belief, on limited and sporadic occasions,  
12 Knapp Farms sold wine under the "Pasta Red," "Pasta Red Reserve," and/or "Pasta White" labels  
13 into local and out of state markets, including California and this district. Upon further information  
14 and belief, as of April 17, 2006, the date of Voicebox's trademark registrations, Knapp Farm's use  
15 of the "Pasta Red," "Pasta Red Reserve," and "Pasta White" labels was sporadic and not sufficient  
16 to establish common law rights to those trademarks.

17           16. Upon information and belief, Knapp Farms previously registered the "Pasta Red"  
18 trademark through the USPTO on or about February 11, 1997 (Registration No. 2,036,878).

19           17. Nevertheless, Knapp Farms thereafter failed to renew its registration through the  
20 USPTO for the "Pasta Red" mark (Registration No. 2,036,878) and such mark was cancelled on or  
21 about November 15, 2003, leading Voicebox to believe that Knapp Farms had little or no interest in  
22 the marks. Upon further information and belief, Knapp Farms has never registered the "Pasta  
23 White" mark with the USPTO. Accordingly, any rights to the "Pasta Red," "Pasta Red Reserve,"  
24 and "Pasta White" marks can only be based upon common law usage, which requires a showing of  
25 consistent and significant use in each specific geographic region claimed. On information and  
26 belief, Knapp Farms has not used the "Pasta Red," "Pasta Red Reserve," or "Pasta White" marks on  
27 a consistent and specific basis in any geographic region since the date of Voicebox's trademark  
28 applications.

**CLAIMS FOR RELIEF**

**COUNT I.**

**(Declaratory Judgment of Non-Infringement of Trademarks and Exclusive Rights of Trademarks)**

18. Voicebox repeats and realleges Paragraphs 1 through 17 above as Paragraph 18 of Count I as though fully set forth herein.

19. Knapp Farms has claimed exclusive rights to Voicebox's registered "Pasta Red Wine" mark and has therefore threatened injury to Voicebox on that basis.

20. An actual, present and justiciable controversy has arisen between Voicebox and Knapp Farms regarding Voicebox's right to use its approved "Pasta Red Wine," "Pasta White Wine," and "Pasta Wine" marks.

WHEREFORE, Voicebox seeks declaratory judgment from this Court that:

(A) Voicebox retains exclusive rights to use its approved "Pasta Red Wine," "Pasta White Wine," and "Pasta Wine" marks throughout the United States; and,

(B) Any further use by Knapp Farms of the "Pasta Red," "Pasta Red Reserve," and "Pasta White" marks after Voicebox's April 17, 2006 filing date constitutes infringement of Voicebox's said exclusive rights.

**COUNT II  
(Trademark Infringement)**

21. Voicebox repeats and realleges Paragraphs 1 through 20 above as Paragraph 21 of Count II as though full set forth herein.

22. Knapp Farms' use of the "Pasta Red," "Pasta Red Reserve" and "Pasta White" marks since the registration of Plaintiff's trademarks comprises an infringement of Voicebox's approved "Pasta Red Wine," "Pasta White Wine," and "Pasta Wine" marks and is likely to cause confusion, mistake and deception to the public as to the identity and origin of Voicebox's goods, causing irreparable harm to Voicebox for which there is no adequate remedy at law.

23. Knapp Farms' has knowingly and willfully infringed Voicebox's rights in the "Pasta Red Wine," "Pasta White Wine," and "Pasta Wine" marks as Knapp Farms was and is well aware of Voicebox's rights in the trademarks and their own lack of rights therein.

24. Unless temporarily, preliminarily and permanently enjoined, Knapp Farms will continue their infringing activities, all to Voicebox's detriment and irreparable damage.

25. Voicebox has suffered money damages in an amount to be determined as a result of Knapp Farms' past activities, and has no adequate remedy at law for Knapp Farms' continuing activities.

26. By reason of the foregoing acts, Knapp Farms is liable to Voicebox for trademark infringement under 15 U.S.C. §1114.

WHEREFORE, Voicebox prays that this Court enter an Order:

(A) That Knapp Farms be temporarily, preliminarily and permanently enjoined from:

1. using the "Pasta Red," "Pasta Red Reserve," and "Pasta White" marks, or any colorable imitation thereof; and,

2. using any trademark that imitates or is confusingly similar to Voicebox's approved "Pasta Red Wine," "Pasta White Wine," and "Pasta Wine" marks.

(B) That, pursuant to 15 U.S.C. §1117, Knapp Farms be held liable for all damages suffered by Voicebox resulting from the acts alleged herein;

(C) That, pursuant to 15 U.S.C. §1117, Knapp Farms be compelled to account to Voicebox for any and all profits derived by it from its illegal acts complained herein;

(D) That Knapp Farms be ordered pursuant to 15 U.S.C. §1118 to deliver up for destruction all containers, labels, signs, prints, packages, wrappers, receptacles, advertising, promotional material or the like in possession, custody or under the control of Knapp Farms bearing a trademark found to infringe on Voicebox's trademark rights;

(E) That the Court declare this to be an exceptional case and award Voicebox its full costs and reasonable attorneys' fees pursuant to 15 U.S.C. §1117;

1 (F) That the Court grant Voicebox any other remedy to which it may be entitled  
2 as provided for in 15 U.S.C. §1116 and §1117 or under state law, and,

3 (G) For such other and further relief as the Court deems just and proper.

4 PLAINTIFF DEMANDS TRIAL BY JURY.

5 DATED: November 7, 2007

KAPLAN FOX & KILSHEIMER LLP

6  
7 By:  / LF

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Case No.:

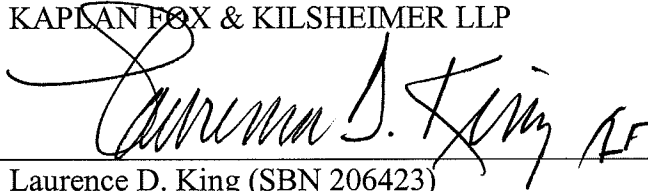
**CERTIFICATION OF INTERESTED  
ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: November 7, 2007

KAPLAN FOX & KILSHEIMER LLP

By:

A handwritten signature in black ink, appearing to read "Laurence D. King", is written over a horizontal line. To the right of the signature, the letters "LF" are handwritten.

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